

IN THE SUPREME COURT OF NORTH CAROLINA

Order Adopting Amendment to Rule 3.1 of the General Rules of Practice For The Superior and District Courts Supplemental To The Rules Of Civil Procedure

Order Adopting Amendments to Rule 3.1 of the General Rules Of Practice For The Superior and District Courts Supplemental To The Rules of Civil Procedure

WHEREAS, section § 7A-32 of the North Carolina General Statutes provides that the Supreme Court has the power to supervise and control the proceedings of any courts of the General Court of Justice, and

NOW, THEREFORE, pursuant to N.C.G.S. § 7A-32, Rule 3.1 of the General Rules Of Practice For The Superior And District Courts Supplemental To Rules Of Civil Procedure is hereby amended to read as in the following pages. These amended Rules shall be effective on the 4th of March, 2004.

Adopted by the Court in conference the 4th day of March, 2004. The Appellate Division Reporter shall publish Rule 3.1 of the General Rules Of Practice For The Superior and District Courts Supplemental to Rules of Civil Procedure in its entirety, as amended through this action, at the earliest practicable date.

I. Beverly Lake, C.J.
For the Court

Rule 3.1 Guidelines for Resolving Scheduling Conflicts

(a) In resolving scheduling conflicts when an attorney has conflicting engagements in different courts, the following priorities should ordinarily prevail:

1. Appellate courts should prevail over trial courts.
2. Any of the trial court matters listed in this subdivision, regardless of trial division, should prevail over any trial court matter not listed in this subdivision, regardless of trial division; there is no priority among the matters listed in this subdivision:

- any trial or hearing in a capital case;
- the trial in any case designated pursuant to Rules 2.1 of these Rules;
- the trial in a civil action that has been peremptorily set as the first case for trial at a session of superior court;
- the trial of a criminal case in superior court, when the defendant is in jail or when the defendant is charged with a Class A through E felony and the trial is reasonably expected to last for more than one week;
- the trial in an action or proceeding in district court in which any of the following is contested:
 - termination of parental rights,
 - child custody,
 - adjudication of abuse, neglect or dependency or disposition following adjudication
 - interim or final equitable distribution
 - alimony or post-separation support

3. When none of the above priorities applies, priority shall be as follows: superior court, district court, magistrate's court.

(b) When an attorney learns of a scheduling conflict between matters in the same priority category, the attorney shall promptly give written notice to opposing counsel, the clerk of all courts and the appropriate judges

in all cases, stating therein the circumstances relevant to resolution of the conflict under these guidelines. When the attorney learns of the conflict before the date on which the matters are scheduled to be heard, the appropriate judges are Senior Resident Superior Court Judges for matters pending in the Superior Court Division and Chief District Court Judges for matters pending in the District Court Division; otherwise the appropriate judges are the judges presiding over those matters. The appropriate judges should promptly confer, resolve the conflict, and notify counsel of the resolution.

(c) In resolving scheduling conflicts between court proceedings matters in the same priority category the presiding judges should give consideration to the following:

- the comparative age of the cases;
- the order in which the trial dates were set by published calendar, order or notice;
- the complexity of the cases;
- the estimated trial time;
- the number of attorneys and parties involved;
- whether the trial involves a jury;
- the difficulty or ease of rescheduling;
- the availability of witnesses, especially a child witness, an expert witness or a witness who must travel a long distance;
- whether the trial in one of the cases had already started when the other was scheduled to begin.

(d) When settlement proceedings have been ordered in superior or district court cases, only trials, hearings upon dispositive motions, and hearings upon motions scheduled for counties with less than one court session per month shall have precedence over settlement proceedings.

(e) When a mediator, other neutral, or attorney learns of a scheduling conflict between a court proceeding and a settlement proceeding, the mediator, other neutral, unrepresented parties or attorneys shall **promptly** give written notice to the appropriate judges and request them to resolve the conflict; stating therein the circumstances relevant to a determination under (d) above.

(f) Nothing in these guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.